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V

LAW AND THE JUDICIAL PROCESS

671 The Mossi possessed a comprehensive body of rules governing human conduct. These rules were well known to the people, and violators were punished by the responsible authorities. The Mossi might be said to have had substantive law, but they had no written codes. Nevertheless, the lack of written codes does not warrant Mangin's blanket criticism of Mossi judicial processes: "Of course, there was no written code, no formal scale of penalties. Everything depended on custom and on the whim of the judge. [662] Thus, the wealthy could obtain sentences in their favor by paying the judges, and thieves could avoid punishment by sharing their loot with the Naba."[1] Custom did dictate the penalties, just as "written custom" dictates penalties [692] in all written legal codes. But, as we shall see, the Mossi did have a known [695] scale of penalties. Moreover, a Mossi judge had to be careful in rendering judgment, because his decisions could be reviewed by a higher court.

596 681 The head of the Mossi extended family, the *Yirisoba*, was responsible for the everyday conduct of his charges. It was his duty to settle all family quarrels, and to punish persons guilty of theft within the compound, disrespect toward elders, and incest. Punishment for the lesser wrongs included 596 683 684 reprimands and floggings. A person found guilty of disrespect to the elders or of incest could be banished from the group. But banishment was so severe that it was imposed only if the criminal refused to make the usual conciliatory gestures and was condemned by all the members of his boodoo. Even after this condemnation, however, he could ask a "sister's son," a yagenga, [613] to intercede for him. This man, the son of a female lineage member, had many privileges within his mother's brother's lineage, including the right to mediate between an exile and his boodoo.

593 586 613 Amicable relations within the family group were most often disrupted by conjugal difficulties. A Mossi husband could occasionally flog an erring wife, but he was not allowed to maltreat her. When a man became disgusted with his wife and wished to repudiate her, he put her water pots in the compound yard. This rather serious action often led to hostile relations

father had given the woman a silver bracelet before he died, and that the babissi felt that this was sufficient, since she had a husband to provide for her. Furthermore, Moussa said that the inheritance had already been distributed, and that any redistribution would impose a hardship on all concerned.

Interpreting the inheritance law according to common practice, the chief ruled that the milk from a man's cattle was for *all* his children, regardless of sex, and that the fact that the father had formerly given the daughter a bracelet should not have influenced the distribution of the inheritance. The chief stated that the woman should receive at least one cow, and that if the defendant did not agree, he (the chief) would recall all the animals and supervise their distribution. He did not feel that he had to state the principles by which he had reached his judgment, for the consensus among the people of the district was that the heir was trying to take advantage of the law for his own selfish interests. Rather than appeal to Ouagadougou, Moussa and his babissi accepted the verdict.

On the basis of these and other cases, we are led to the conclusion that the Mossi felt that law and the judicial process should serve to reconcile people and to maintain what was commonly considered to be social justice.

Most of the cases at the district court were tried in the same manner as those cited above. Cases involving relations between men and women were the most common. This is paradoxical, because the district chief tried to avoid any involvement with such cases. For every domestic case tried by the district chief, five others were sent back to the village or lineage level. Even so, it is estimated that about 80 per cent of the cases tried by Mossi district chiefs ultimately concerned women. The most common case of this type was the alleged refusal of a woman to return to her husband.[8] If the judge found that another man had encouraged her to leave her husband, he ordered her to return to him and warned her and the man about the possibility of serious difficulty with her husband's relatives. On the other hand, if the chief found that the woman had left a cruel husband who threatened to harm her or her relatives, he warned the husband not to carry out his threats. The Mossi had no bride price; thus, a woman's family was not faced with the problem of restitution. Sometimes, an angry husband did demand that his wife's family return the gifts (*pogopossum*, "thanks for the woman") he had given them from time to time—e.g., at funerals—and they complied.

Adultery cases were next in frequency at the district court. A man convicted of adultery with another man's wife was either warned to leave her alone or fined a sheep or a goat. He was also liable to be put in stocks for